



Committee On Finance

Max Baucus, Ranking Member

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**Statement of U.S. Senator Max Baucus
United States Senate Finance Committee Hearing
“The Tax Code and Land Conservation: Report on Investigations and Proposals for
Reform.”**

Thank you, Mr. Chairman. When I see the natural beauty of Montana, I often think of the words from the book of *Job*: “Stand still, and consider the wondrous works of God.”

You can see the hand of Providence when you stand at the edge of the Blackfoot river, when you stand at the base of Grinnell Glacier, and when you look out across a field of winter wheat on a cloudless day in Glasgow, Montana.

Montanans are close to the land. Montana has wonderful, clean rivers and streams. We have fish and wildlife in abundance. And we have farmers and ranchers who are committed to the proud Western heritage of responsible stewardship of the land.

Protecting Montana’s and America’s natural legacy is a commitment to which I hold fast.

Today’s oversight hearing looks at gifts of land. We will hear about two investigations involving the potentially improper use of charitable tax deductions for land donations:

- the Finance Committee staff investigation into the Nature Conservancy,
- and the Inspector General’s investigation into the Department of the Interior’s proposed purchase of mineral rights in Florida.

These investigations show why it is so essential to maintain the integrity of our tax incentives for conservation. Americans must be able to trust that when they give land for a conservation purpose, that land will serve a conservation purpose. Americans must be able to see that their tax dollars are being used wisely. And they must be able to see that tax deductions have a relationship to the value of donations claimed.

The tax code allows people to claim a deduction for the fair market value of land that they donate to a charitable organization. Fair market value means what a willing buyer and seller would agree as a price for the land, if it were not donated.

In addition, people can claim a charitable deduction for the fair market value of part of their interest in the land when they donate that partial interest, as long as the interest serves an important conservation goal. People call this “a conservation easement.”

People may deduct up to 30 percent of their adjusted gross income for these donations, whether they are donations of full interests or conservation easements. Adjusted gross income is the amount of income that a person pays tax on.

Let me give an example of how a conservation easement works. A farmer who owns 100 acres of undeveloped land decides that he wants his land to stay as productive farmland forever, and not allow the land to be developed or subdivided. The farmer appreciates the open space that is created by his farm, and wants to pass the farm on to his children and grandchildren.

One way that the farmer can accomplish this goal is to donate a conservation easement that prohibits future generations from building or subdividing the farm. The farmer would be required to donate the easement to either

- a qualified organization, like a land trust,
- or an arm of the government, federal, state, or local.

The value of the deduction would reflect how much the restriction on development and subdivision reduced the price of the farm.

In a place like the Bitterroot Valley in Montana, where developers are buying up farms to build vacation homes, such a restriction could be valuable. In other places, where there is less demand to develop, the value may be small or nonexistent. The law requires the farmer to have a qualified appraisal done for any donation of more than \$5,000.

Finally, in order to qualify for a tax deduction, the farmer must prove that the restrictions placed on the farm serve a real conservation purpose. It is not a qualifying conservation purpose to allow just 15 subdivisions instead of 20. Nor is it a qualifying conservation purpose to place an easement over a golf course.

In order to meet a conservation purpose for an open space easement, the farmer needs to show the easement benefits the scenic enjoyment of the public, or is pursuant to a federal, state, or local conservation policy. In either case, the farmer has to show that the easement will yield a significant benefit to the public.

The laws allow the farmer to continue using the farmland productively, as long as the productive use is consistent with conservation goals. This policy has allowed thousands of farmers to maintain the great American tradition of the family farm.

As you can see, current law has significant hurdles in place to prevent abuse in land conservation. Unfortunately, these obstacles have not prevented some from gaming the system.

The staff report on The Nature Conservancy and the Inspector General's testimony show how lax procedures by land trusts and improper valuations can give land conservation efforts a bad name.

The Nature Conservancy Report shows that some conservation properties sold by The Nature Conservancy were made available only to Nature Conservancy insiders, and not the general public. Such collusion diminishes the ability of a land trust to fairly assess the conservation value of easements donated to the land trust, and dims public confidence in tax deductions claimed for land conservation.

I am glad that The Nature Conservancy has taken steps to address deals with insiders with the reforms that they adopted last year. This step, among others, should help to restore needed public confidence in The Nature Conservancy.

Mr. McCormack, I look forward to hearing from you what additional steps The Nature Conservancy should take to heal its reputation, and to ensure the American people's confidence.

While I believe that The Nature Conservancy is now basically on the right path, I am deeply troubled by the issues raised in the report by the Department of the Interior's Inspector General.

Mr. Devaney, welcome back to the Committee. Mr. Devaney last came to the Committee to testify on the abysmal state of jails run by the Bureau of Indian Affairs. Today, he has come to shine the spotlight on another shameful episode within the Department of Interior: the Department's attempted acquisition of mineral rights from the Collier Resources Company.

In short, the report shows that the political leadership at the Department of the Interior agreed to purchase mineral rights held in Florida for an amount that was overvalued by roughly \$70-to-\$80 million. Further, it shows that the Department failed to follow its normal appraisal procedures in arriving at a value for the interests.

Finally, after paying tens of millions of dollars too much for the mineral rights, the administration agreed to sign a form allowing the Collier Resource Company to take a charitable deduction for selling the property to Interior at a discount. A discount? Apparently, the Department allowed the taxpayers to be fleeced for \$70-to-\$80 million, and then authorized a tax deduction for the fleecing. This transaction is an outrage. It is a terrible waste of taxpayer dollars.

I look forward to Mr. Devaney's testimony today. I am also interested in his opinion on who should ultimately be held accountable for this charade at the administration, and how we can prevent something like this from happening again.

I am pleased to see that the second panel contains thoughtful experts on the issues we are discussing today. I look forward to hearing from you on what steps need to be taken in order to preserve the legacy of land conservation efforts in America.

Finally, I would like to make special mention of a person who had a significant hand in producing the Report on the Nature Conservancy. Ron Schultz left the Joint Committee on Taxation last December to re-join his family in Minneapolis. He's been in private practice there since. But he has volunteered his time pro-bono to the Committee in order to help finish the report. It has meant many late nights, early morning conference calls, and flights back to Washington on his own dime. Ron, thank you for your service.

At its core, this hearing is about preserving the last, best places on earth. Preserving the unique character of America's unspoiled wilderness and farmland is a responsibility we have to the next generation. We must be scrupulous about ensuring that the tax dollars devoted to this endeavor are not wasted.

A few years ago, I had the opportunity to work on a small project to restore Bull Trout habitat. It was on a ranch owned by a fellow named Geoff Foote, outside Ovando, about 70 miles west of Missoula, along the Blackfoot river.

A stream had been straightened, which had the effect of reducing the amount of gravel that Bull Trout need to spawn. We stabilized stream banks, added some streamside cover, and used dirt, stones, and stumps to make the stream meander.

This project was part of a program called the Blackfoot Challenge. The Blackfoot Challenge is a landowner-based group that coordinates management of the Blackfoot River, its tributaries, and adjacent lands. It is nationally recognized, and The Nature Conservancy has been a part of it. But unless we address abuse in the sector, this terrific effort will be overshadowed by articles in the newspaper. We must act together to protect this important work.

This may mean enacting targeted reforms to prevent abuse of the tax laws in the future. I am committed to working with the Chairman and members of the Committee to do this. I look forward to the testimony today.

